

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD**

WRIT PETITION No. 6379 of 2006

Between:

M/s Narayanaswamy Boiled Industrides,
Represented by its Managing Partner
Sri P.Venkateswarlu r/o Boppudi village
Chjilakaluripeta, Guntur Dist. ...Petitioner

AND

Authorised Officer, Andhra Bank,
Special SSI Branch, Guntur and another ...Respondents

Counsel for the petitioner: Shri T.Sharath for
Shri E.V.Bhagiratha Rao

Dated: April 3, 2006

ORDER:

Per G.S.Singhvi, C.J.

The petitioner belongs to the new creed of litigants who take loan and avail credit facilities etc., from the banks and other financial institutions, commit defaults in the matter of repayment of dues and then engage them in different types of litigation.

A perusal of the affidavit filed by Sri Pirikiti Venkateswarlu, managing partner of the petitioner shows that the petitioner had availed credit facilities and taken term loan from Andhra Bank (for short 'the Bank') for its business activities, but did not repay the amount. This compelled the Bank to invoke the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). The Bank issued notice dated 26-5-2005 under Section 13 (2) of the Act and called upon the petitioner to pay a sum of Rs.1,05,53,264/- within a period of sixty days. The petitioner did not respond to the notice. Therefore, the Bank took action under Section 13 (4) of the Act and issued letter dated 23-11-2005 for taking possession of the immovable properties i.e., rice mill, plant and machinery situated in Ac.2-50 cents and vacant plot measuring Ac.2-84 cents situated in Village Boppudi abutting National Highway No.5, Ongole Road.

The petitioner challenged the action taken by the Bank and filed an application/appeal before the Debt Recovery Tribunal at Visakhapatnam (for short 'the Tribunal'). It also applied for restraining the Bank from disposing of the property. By an order dated 14-12-2005 passed in I.A.No.142 of 2005, the Tribunal stayed the proceedings initiated by the Bank subject to the condition that the

petitioner shall pay a sum of Rs.10 lakhs on or before 31-12-2005, another sum of Rs.10 lakhs on or before 31-1-2006 and the remaining amount of Rs.68.50 lakhs on or before 31-3-2006. The petitioner did make a show to comply with the conditional order passed by the Tribunal by depositing Rs.10 lakhs, but did not deposit the second installment of Rs.10 lakhs by 31-1-2006 and the balance amount of Rs.68.50 lakhs by 31-3-2006.

The petitioner's failure to abide by the condition imposed by the Tribunal prompted the Recovery Officer of the Bank to issue notice dated 13-2-2006 for sale of the property. On coming to know of this, the petitioner again tried his luck before the Tribunal. It filed an application for postponing the auction. By an order dated 13-3-2006 the Tribunal granted stay up to 3-4-2006 and fixed the matter on 7-4-2006. However, without waiting for final verdict of the Tribunal on the application filed by it, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

We have heard Sri T. Sharath appearing for Sri E.V. Bhagiratha Rao, counsel for the petitioner. In our opinion, the petitioner has miserably failed to make out a case for judicial intervention in the matter. Sri Sharath submitted that his client has entered into One Time Settlement with the Bank under which the latter has agreed to settle the account by accepting a sum of Rs. 88.50 lakhs and, therefore, the time fixed by the Tribunal may be extended. He further submitted that the petitioner is making sincere and serious efforts to repay the entire amount but some time is required for that purpose. In our opinion, the failure of the petitioner to repay the amount of loan etc., and abide by the conditional order dated 14-12-2005 passed by the Tribunal is sufficient to disentitle it from claiming any relief under Article 226 of the Constitution of India.

While declining the petitioner's prayer, we are conscious of the fact that as on the date of enactment of 2002 Act, a sum of rupees one

lakh twenty thousand crores of public money was in red and all efforts made by the banks and public financial institutions to recover the public monies had proved futile necessitating a drastic legislature measure by the Parliament, the constitutional validity of which has been upheld by the Supreme Court in **Mardia Chemicals Ltd. V. Union of India** ^[1] except to the extent of onerous condition imposed for availing the remedy of appeal.

With the above observation, the writ petition is dismissed.

G.S.SINGHVI, C.J.

G.BHAVANI PRASAD, J.

April 3, 2006

GRR /svs/vtv

^[1] AIR 2004 SC 2371